THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 894 of 2001
Old F.A. No. 317 of 1982

State of U.P. through the Deputy Commissioner (Collector), Pithoragarh.

… Appellant.

Versus

Ram Singh S/O Kalyan Singh, resident of Fildhukari, Pithoragarh.

…Respondent.

Ms. Seema Sirohi, learned Brief for the appellant-State.
Sri G.B. Pande, Adv., learned counsel for respondent.

Dated June 20,2006
P.C.: Hon. B.S. Verma, J.

This appeal arises out of the judgment and decree dated 20-2-1982, passed by the then District Judge, Pithoragarh, in Original Suit No. 8 of 1979, Ram Singh Vs. State of U.P., whereby the learned District Judge decreed the suit of the plaintiff-respondent in part for recovery of Rs. 8687.65 along with interest @ 6% per annum against the defendant-appellant.

Relevant facts necessary for a just decision of the appeal are that the plaintiff-respondent filed a suit with the allegation that the plaintiff-contractor started the construction work on the quotation of the plaintiff having been accepted by the District Horticulture Officer Pithoragarh ***(for short D.H.O)*** vide his letter dated 4.3.1976 (Ext. A-3) and he complied with the said letter. In the process, the plaintiff was asked to follow the directions of the Incharge Government Horticulture at Sandeo (Didihat). Subsequently, the D.H.O. altered certain items and informed the contractor-plaintiff that payment in respect of the altered items shall be made in accordance with scheduled rates per letter dated 9-3-1976. The plaintiff completed the work and informed the D.H.O. in that regard, who in turn vide letter dated May 25,1976 informed the contractor that he should get the measurement of work done by Sri Attar Sing, Incharge Hydram Scheme in presence of the Incharge Horticulture Sandeo and asked him to submit the bills for payment

after getting the same attested by him. The plaintiff accordingly complied the directions and consequently the bills were prepared the duly attested by Horticulture In-charge concerned. The work so measured came to the tune of Rs. 11,555.02P. The D.H.O. was requested to get the needful done and payment made to the plaintiff but to no avail. Which ultimately necessitated to issue of notice under Section 80 of the C.P.C., which was received by the Collector Pithoragarh on 25.6.1977. Hence the suit was filed for recovery of principle amount as well as interest of Rs. 4,075/-@ 12% under the Interest Act.

The suit was resisted by the State asserting that tender worth Rs. 5,124/- submitted by contractor plaintiff was accepted and the plaintiff was required to complete the said work and to deposit 5% security money as well as to execute deed of agreement. The stipulated period was up-to 25.3.1976 as per conditions of tender for completion of work. According to State, the plaintiff was given a notice but he neither deposited the security money nor executed deed of agreement thereby he committed breach of condition of tender. Plea of collusion of plaintiff with the Officer Incharge Hydram Scheme was also taken. It was also denied that any work beyond the contract of agreement was taken from the plaintiff. It was also alleged that the conditions of the contract agreement were not complied by the contractor. The dispute ought to have been referred to the Arbitrator, therefore, the civil court has no jurisdiction in the matter. The State-appellant denied that he plaintiff was given the work of Rs. 11,555.02.

The learned District Judge framed necessary issue in the case, recorded the evidence led by the parties, heard them and after perusing the evidence, it was held that there was no collusion between the plaintiff and Sri Attar Singh, the authorized officer of the plaintiff in getting the bill prepared for payment. The learned District Judge after thrashing out the truth from the material and evidence on record came to the conclusion that the plaintiff was

entitled to recovery sum of Rs. 8687.65 from the State and his claim for recovery of rest of the amount was turned down. Accordingly the suit filed by the plaintiff was decreed for recovery of Rs. 8687.65 along with interest @ 6% per annum as mentioned earlier.

In the course of argument, the contention that the learned District Judge had not decided the preliminary issue regarding reference of the dispute to the arbitrator and bar of jurisdiction of civil court, therefore, the impugned judgment is bad in law, has not been seriously challenged. Moreover, the plea was raised by the defendant and it was for the defendant to have led the evidence and should have pressed the issue. Since the learned counsel for the State himself had not pressed the issue before the trial judge, therefore, there was no necessity for him to have expressed specific finding thereon, particularly because the preliminary issue was framed on 3-9-1980 and on 25.10.1980, the same was not pressed and other four issues were framed in the suit. If the defendant would have been aggrieved by non disposal of the preliminary issue, it was open for the State to have come up in appeal or revision soon after 25-10-1980 or at least before the decision of the suit on February 20, 1982, rather the defendant-appellant fully participated in the proceedings before the District Judge. Now, it is not open for the State to challenge the point because the issue was not pressed on behalf of the State on 25-10-1980.

The impugned decree has been hammered by the State mainly on the ground that the learned District Judge ought not have placed reliance on paper no. 49-C produced by the plaintiff. The learned District Judge besides other evidence on record has dealt with the contention in para no. 14 of the impugned judgment elaborately. The witness from the side of the appellant D.W. 1 Harish Chandra Bhatt, the then **D.H.O.** had not said anything regarding the averments made in this document.

After having gone through all the aspect of the case, it is established on record that the claim of the plaintiff for recovery of Rs. 8687.65. is fully supported by the oral as well as documentary evidence on record, which have already been discussed by the trial court. Out of the total claim of Rs. 15,630/-, the claim of the contractor plaintiff for recovery of Rs. 8687/-, was accepted against the State. I do not find any infirmity or illegality in the impugned decree dated 20-2-1982.

In the result, the appeal lacks merit and must fail.

The appeal preferred by the State is dismissed. The judgment and decree under appeal are upheld. No order as to costs.

(B.S. Verma, J.)

RCP